

the provisos to section 8 of the Ordinance or the proviso to section 7 of the Enactment respectively applies, by applying direct to the Court for recovery of possession without any notice to quit being given — subject as I have hereinbefore stated.

Whether in Singapore and the Settlements of Penang and Malacca, or in the States which form part of the Malayan Union, as soon as a tenant becomes fourteen days in arrear with his rent lawfully due, a right accrues to the landlord to put in motion the steps to effect recovery of possession. The first step is to issue a notice to quit and, on expiry thereof, he may issue his writ claiming possession. His cause of action arose on the failure of the tenant to pay the rent for fourteen days after it became due. Unless the landlord has done anything effecting a waiver of the notice to quit, his right of action survives unimpaired and it is the fact that the rent was so in arrear at the time of the service of the notice to quit that is the material consideration.

Where there is nothing to bring within the proviso to section 7 of the Enactment or the provisos to section 8 of the Ordinance, as the case may be, the landlord's right to recovery of possession of the premises from his contractual tenant, he must apply to the Board for an order, before ejecting his tenant, but, in Singapore and the Settlements of Penang and Malacca, he is not precluded in a proper case, from determining the contractual tenancy by serving notice to quit.

And now to apply my conclusions to the present case: — When notice to quit was served upon the tenant, the defendant herein, on the 29th March, 1947, the rent of the premises, the subject matter of this Suit, was 28 days in arrear. The notice to quit expired on the 30th April, 1947. Before such expiration the plaintiffs did not waive such notice. Rent due up to the 30th April, but not thereafter, was accepted by the plaintiffs during the period while the notice was running. The fact that rents due from and after the 30th April was tendered to the plaintiffs by the defendant is immaterial for the purposes of the plaintiffs' claim.

Judgment Accordingly.

CHENG AH SANG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) February 28, 1948]
[Johore Bahru — Crim. App. No. 2 of 1948]

Common Gaming Houses, Laws of Johore Enactment 37, S. 4 (1) (a).

In this case the trying Magistrate called on the accused to plead to the charge of keeping or using a

house, No. 12 at 5th Mile Jalan Kluang — Ayer Hitam, as a common gaming house on 28th December, 1947 contrary to the provisions of section 4 (i)(a) of the Common Gaming Houses Enactment. On his plea of guilty the Magistrate proceeded to take a summary of the facts alleged by the prosecution. He then questioned accused on those facts and, when he found accused did not admit the gaming was for money, he altered his plea of guilty to a claim for trial. The trial then proceeded and the accused was convicted.

Held, (a) that before the Court records a plea of guilty by the accused it should satisfy itself by questioning the accused that he does really understand the charge and admit each ingredient that goes to make it up. (b) That gaming is a highly technical and artificial offence and to insure a conviction it is necessary that the provisions of the Enactment be rigidly and meticulously followed out in order that the presumptions laid down for the help of the police in prosecuting offenders may arise.

CRIMINAL APPEAL.

A. J. Braga for Appellant.

Jaafar Taha — Deputy Public Prosecutor for Respondent.

Laville, J. : — The appellant in this case was convicted of keeping or using house No. 12, at 5th mile, Jalan Kluang — Ayer Hitam, as a common gaming house on 28.12.1947, contrary to the provisions of section 4 (i) (a) Enactment 37 of the Laws of Johore, and fined \$500 or in default of payment 3 months R.I.

The trying Magistrate called on the accused to plead to the above charge which is recorded as having been explained to the accused, and on his plea of guilty proceeded to take a summary of the facts alleged by the prosecution, and then appears to have questioned accused on those facts and, when he found accused did not admit the gaming was for money, to have altered his plea of guilty to a claim for trial.

This procedure is open to criticism in that it elicits the prosecution evidence before the Court has satisfied itself as to whether the accused's plea of guilty is acceptable. A Magistrate should satisfy himself by questioning accused that he does really understand the charge and admits each ingredient that goes to make it up, before he records a plea of guilty by the accused and should record that the accused understands the charge before entering his plea of guilty.

The trial proceeded on the basis that accused had claimed trial, and it was therefore incumbent on the prosecution to prove its case affirmatively. It is quite clear that the information given to the police by the informer and recounted by the Court Inspector in his evidence is inadmissible as hearsay. It is also evident that the raid on No. 12 was not made under the provisions of the Gaming Enactment and that therefore no presumptions can be drawn in favour of the

prosecution, and that accordingly the fact that *Pai Kow* is a game of chance and that it was being played for money or money's worth must be affirmatively proved, as also the fact that accused was the owner or occupier of No. 12 and was using it as a common gaming house.

It is difficult to see under what authority the police entered these premises at all. No warrant under the Gaming Enactment was put in evidence nor was evidence led that the Inspector who raided the place was a Senior Police Officer acting under section 16 (1) of the said Enactment. The evidence is that the game was being played in the back portion of a shop which was not a public place, and there is no evidence to show that a search warrant under the Criminal Procedure Code had been issued or that the provisions of section 16 (1) and (2) thereof applied.

Be that as it may, the issue before the Court was whether the owner or occupier of the place entered was using it as a common gaming house, and whether without the aid of presumptions under the Common Gaming Houses Enactment the prosecution had proved its case sufficiently to justify calling on the accused to rebut it.

The evidence for the prosecution is that of Court Inspector Ali who not only conducted the raid but also the prosecution. In this connection I must point out that it is not usual that an officer actually taking part in the investigation of an offence and the arrest of the accused should conduct the prosecution of that accused. His evidence as to ownership or occupation of the premises by accused is simply a flat statement that accused was proprietor of the premises. There was no cross-examination by the accused. His evidence also is that he found in the premises 7 or 8 Chinese playing a domino game called *Pai Kow*, that some put money in their pockets and that there were chips on the table and on person of accused and also cups and dice. The inference drawn by the prosecution from this is that the game had some connection with the money, chips and dice and that the game was being played for money or money's worth.

If the game being played amounted to gaming, it is clear from the definition of the word "place" in the Common Gaming Houses Enactment that the room in No. 12 was being used for gaming and that the room was being used as a common gaming house.

There is no evidence that the game of *Pai Kow* is a game of chance or mixed chance and skill, even if the inference drawn from the exhibits found is that it was being played for money or money's worth.

The other witness for the prosecution, Goh Ah Soon, who was taking part in the game, appears to be an accomplice. He would appear to come under the 3rd category of those in section 4 (i) (a) who use a place for gaming and his evidence requires corroboration. His evidence is that accused was proprietor of the shop but he gives no reason for this statement. He states that gambling was taking place but this statement was not corroborated by the evidence of the Inspector.

That completes the evidence of the prosecution. It is clear that ownership of the premises by accused is not affirmatively proved, and that the essential element of gaming in regard to the game played by those arrested there has also not been proved. Further there is the admission of vital hearsay evidence in regard to the nature of the proceedings in the house, which must have affected the mind of the Magistrate in his apprehension of the case, even though, as far as possible, he tried to ignore it.

The prosecution had not made out a case which if unrebutted would warrant a conviction and accused had the right to be discharged at that stage of the proceedings without being called on to make his defence.

I would call the attention of the police authorities to the fact that gaming is a highly technical and artificial offence and that to ensure a conviction it is necessary that the provisions of the Enactment be rigidly and meticulously followed out, in order that the presumptions laid down for the help of the police in prosecuting offenders may arise.

The appeal must be allowed and the conviction and sentence set aside, and the fine paid refunded.

Appeal Allowed.

LIEW SANG v. PUBLIC PROSECUTOR.

[C.A. (Pretheroe, Ag. C.J., Federation of Malaya, Murray-Aynsley, C.J., Singapore and Bostock Hill, J.) March 8, 1948]

[Fed. — Cr. App. No. 11 of 1948]

Criminal Procedure Code, s. 191 — Right of accused to decide whether or not he will be a witness in the case.

An accused person has the right to decide whether or not he will be a witness in the case, and consequently, unless he so elects, he cannot be compelled to give evidence by, or on behalf of, anyone. If a co-accused desires to call him, he must be warned that he need not give evidence unless he wishes and that, if he does so, he will be liable to be cross-examined by the prosecution.